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U.S. Department of Justice

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

November 22, 2020

BY ECF

The Honorable Gregory H. Woods United States District Judge Southern District of New York Daniel Patrick Moynihan U.S. Courthouse 500 Pearl Street New York, New York 10007

Re: United States v. Ethan Phelan Melzer, S1 20 Cr. 314 (GHW)

Dear Judge Woods:

At the September 7, 2020 conference, the Government informed the Court that it anticipated producing a limited quantity of classified discovery to the defense, pursuant to the Classified Information Procedures Act ("CIPA"). The Government writes to provide the Court with additional information about the procedures under CIPA that govern the Government's classified discovery production and to request that (i) the Court enter a protective order, on consent, governing classified materials to be provided in discovery; and (ii) the Court appoint a Classified Information Security Officer in this matter.

As detailed in the Government's letter dated September 11, 2020, see Dkt. No. 36, CIPA specifies procedures for the production of classified information to the defense and litigation over the use of that classified information at a hearing or trial. See In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 93, 121 (2d Cir. 2008) (CIPA "imposes upon district courts a mandatory duty to guard against the unauthorized disclosure of any classified material disclosed by the United States to any defendant in a criminal case." (internal quotation marks omitted)). As relevant at this juncture, Section 3 of CIPA provides that "[u]pon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States." In this case, defense counsel Jonathan Marvinny, Esq., whose security clearance has been reactivated, has consented to a proposed CIPA § 3 protective order, attached hereto as Exhibit A (the "CIPA Protective Order"), which is modeled after protective orders used in other cases involving classified information. See, e.g., United States v. Schulte, No. 17 Cr. 548 (PAC) (SDNY) Dkt. No. 61. The Government therefore respectfully submits the CIPA Protective Order for the Court's consideration and requests that the Court enter the CIPA Protective Order.

The Government also respectfully requests that the Court appoint Daniel Hartenstine as the Classified Information Security Officer ("CISO") in this matter. Mr. Hartenstine, who has been recommended in the enclosed letter, attached hereto as Exhibit B, to be appointed as CISO for the case, is the Chief of Operations for the Litigation Security Group at the Department of Justice. The Litigation Security Group is comprised of security specialists whose responsibility is to act as

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CISOs in criminal litigation as well as civil matters. Mr. Hartenstine is responsible for overseeing this program. He also provides regular support to the Southern District of New York. In this district, Mr. Hartenstine acts or has acted as the primary CISO in, among other cases, *United States v. Zachary Clark*, 20 Cr. 76 (NRB); *United States v. Jesus Encarnacion*, 19 Cr. 118 (RA); *United States v. Ramses Owens, et al.*, 18 Cr. 693 (RMB); *Schulte*, 17 Cr. 548 (PAC); *United States v. Sayfullo Saipov*, 17 Cr. 722 (VSB); *United States v. Chi Ping Patrick Ho*, 17 Cr. 779 (LAP); and *United States v. Reza Zarrab, et al.*, 15 Cr. 867 (RMB).

Respectfully submitted,

AUDREY STRAUSS Acting United States Attorney

By: /s

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cc: Defense Counsel (by ECF)

Daniel O. Hartenstine (by email)

Application denied without prejudice. The proposed order includes factual findings by the Court that are not supported by a sworn declaration or other evidence. *See, e.g.,* ¶¶ 11, 12, 19, as to which the Court has not received the referenced advice or information. In addition, paragraph 10 of the proposed order references the appointment of Mr. Hartenstine as the CISO. The Court requests that the United States provide the Court with a form order to implement that appointment.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 41.

SO ORDERED.

November 23, 2020

GREGORY H. WOODS United States District Judge